

Message Text

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APPROVED BY EA/PHL:DCCUTHELL

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EA/EP:DWILSON (DRAFT)

L/EB:DBURNS (DRAFT)

WH:STR:MRS. STEINBOCK (SUBSTANCE)

COMMERCE:OITP:JJOHNSON (SUBST.)

EA/EP:AGEBER (DRAFT)

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R 082032Z MAR 74

FM SECSTATE WASHDC

TO AMEMBASSY MANILA

INFO USMISSION GENEVA

CINCPAC HONOLULU HI

C O N F I D E N T I A L STATE 047139

LIMDIS

E.O. 11652:GDS

TAGS: EGEN, PFOR, MASS, RP

SUBJECT: U.S.-PHILIPPINE ECONOMIC NEGOTIATIONS

REFS: A. MANILA 1821

B. MANILA 1948

C. STATE 29819

D. MANILA 1791

E. MANILA 1479

F. MANILA 1058

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CINCPAC ALSO FOR POLAD

GENEVA FOR GEORGE ALDRICH

1. FOLLOWING ARE COMMENTS IN REPLY TO VARIOUS QUESTIONS AND OBSERVATIONS BY EMBASSY ON PENDING ECONOMIC DISCUSSIONS WITH GOP.

2. IN GENERAL, AS INDICATED REF C, WE FAVOR EMBASSY'S EFFORTS TO KEEP GOP AWARE IT IS UP TO THEM TO TAKE INITIATIVE ON AER BY PROVIDING SUBSTANTIVE RESPONSE TO OUR DRAFT. IN THIS CONNECTION, WE WOULD, OF COURSE, PREFER RECEIVING SPECIFIC COMMENTS OR COUNTER PROPOSALS TO PROVISIONS OF OUR DRAFT RATHER THAN A SEPARATE PHILIPPINE COUNTER DRAFT, WHICH COULD WELL CREATE MORE NEGOTIATING DIFFICULTIES THAN ALREADY EXIST. AT THE SAME TIME WE WOULD NOT WISH TO CONVEY AN IMPRESSION OF ANXIETY ON OUR PART IN PURSUIT OF AN AGREEMENT FOR ITS OWN SAKE. IN PRESENT SITUATION WE SEE GOP NEED FOR AER TREATY AS GREATER THAN OURS, AND DO NOT ENVISAGE CONCLUSION OF AER TREATY WITHOUT REASONABLE GRANT OF NATIONAL TREATMENT. CERTAINLY THERE WILL BE LIMITATIONS ON SUCH TREATMENT, BUT MFN NOT SUFFICIENT.

3. IN THIS CONNECTION, ATTENTION IS DRAWN TO PARA 26 OF 1967 REPORT OF JOINT PREPARATORY COMMITTEE WHICH PROVIDES: QUOTE BOTH GROUPS AGREED THAT RECIPROCAL NATIONAL TREATMENT WILL BE INCLUDED TO THE MAXIMUM EXTENT POSSIBLE IN ANY FUTURE AGREEMENT ON ECONOMIC RELATIONS BETWEEN THE TWO COUNTRIES, AND THE PHILIPPINE PANEL STATED THAT IT WOULD GIVE FURTHER CONSIDERATION TO THIS QUESTION WITH A VIEW TO DETERMINING THE EXTENT TO WHICH EXCEPTIONS TO NATIONAL TREATMENT WOULD BE REQUIRED BY THE PHILIPPINES. WITH THE EXCEPTION OF CERTAIN AREAS, SUCH AS NATURAL RESOURCES, PUBLIC UTILITIES AND RETAIL TRADE, WHERE MOST-FAVORED-NATION TREATMENT SHOULD BE ACCORDED, THE TWO GROUPS BELIEVE THAT A PROVISION ACCORDING NATIONAL TREATMENT CAN BE WORKED OUT. UNQUOTE.

4. RE PARA 4 REF E, WE DO NOT EQUATE NATIONAL TREATMENT WITH PARITY. "PARITY" REFERS ONLY TO THE SPECIFIC PACKAGE OF NATIONAL TREATMENT RIGHTS, IN DEROGATION OF THE PHILIP-
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PINE CONSTITUTION, EMBODIED IN LAUREL-LANGLEY AND THE PARITY AMENDMENT TO THE CONSTITUTION, AND IT WAS IN THESE TERMS THAT IT WAS TREATED IN 1967 TALKS. A TREATY, HOWEVER, MAY PROVIDE NATIONAL TREATMENT WITH RESPECT TO CERTAIN TYPES OF ACTIVITIES, AND NOT OTHERS. IT SHOULD BE NOTED THAT THE U.S. DRAFT AER TREATY DOES NOT CALL FOR NATIONAL TREATMENT IN IMPORTANT AREAS WHERE U.S. CITIZENS WERE ENTITLED TO NATIONAL TREATMENT UNDER LAUREL-LANGLEY,

AS, FOR EXAMPLE, ACQUISITION OF REAL PROPERTY, AND INVESTMENT IN THE AREAS OF TELECOMMUNICATIONS, TRANSPORTATION, BANKING AND NATURAL RESOURCES EXPLOITATION. THUS "NATIONAL TREATMENT" AS EMBODIED IN THE DRAFT SHOULD NOT BE SEEN AS AN EFFORT TO PROLONG PARITY RIGHTS. WE RECOGNIZE THAT FILIPINOS MAY BE SENSITIVE TO ANY GRANT OF NATIONAL TREATMENT WHICH MIGHT CONFLICT WITH EXISTANT OR POTENTIAL RESTRICTIONS ON FOREIGNERS UNDER PHILIPPINE LAW, EVEN IN AREAS NOT RESERVED UNDER PHILIPPINE CONSTITUTION, BUT IT WOULD BE INCORRECT TO CHARACTERIZE NATIONAL TREATMENT IN SUCH AREAS AS EQUIVALENT OF "PARITY".

5. WE ARE ALSO PREPARED TO CONSIDER OTHER EXCEPTIONS WHICH GOP MAY PROPOSE. FOR EXAMPLE, IN THE RETAIL TRADE AREA, WE WOULD AGREE TO AN EXCEPTION IF A SUITABLE DEFINITION CAN BE AGREED UPON. IN THIS CONNECTION, IF GOP COULD ACCEPT AMCHAM DEFINITION REF F, SUCH A DEFINITION, OR A SIMILAR

ONE, COULD BE EMBODIED IN THE TREATY.

6. RE TARIFF QUESTION RAISED IN REF B. IT IS NOT REPEAT NOT POSSIBLE FOR U.S. TO MAKE TARIFF REDUCTIONS DESIRED BY GOP WITHOUT NEW LEGISLATION, SUCH AS PROVIDED BY THE TRADE BILL NOW UNDER CONSIDERATION IN CONGRESS. (WE THOUGHT THIS POINT WAS CLEAR TO VIRATA ON BASIS OF HIS CONVERSATIONS HERE LAST SUMMER.) ONCE TRADE BILL PASSED, WE WOULD, OF COURSE, ENDEAVOR TO WORK OUT MUTUALLY SATISFACTORY TARIFF ADJUSTMENTS WITH PHILIPPINES IN MULTILATERAL TRADE NEGOTIATIONS (MTN) CONTEXT. FYI ONLY: BILATERAL NEGOTIATIONS ARE AUTHORIZED UNDER TRADE BILL AS NOW DRAFTED; HOWEVER, NO DECISION HAS BEEN MADE TO NEGOTIATE BILATERALLY, AND SUCH TALKS COULD NOT OF COURSE RESULT IN APPLICATION OF NON-MFN RATES OF DUTY. WE WOULD NOT WISH TO SEEK SPECIAL LEGIS-

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LATION ON BEHALF OF PHILIPPINES WHILE TRADE BILL IS BEFORE CONGRESS. END FYI.

7. CURRENT DRAFT OF TRADE BILL PERMITS MFN ELIMINATION OF DUTIES BELOW 5 PER CENT AD VALOREM, ALLOWS 60 PER CENT REDUCTION OF DUTIES BETWEEN 5 AND 25 PER CENT AD VALOREM, AND ALLOWS REDUCTION OF 75 PER CENT (BUT TO NOT LESS THAN 10 PER CENT AD VALOREM) OF DUTY ABOVE 25 PER CENT AD VALOREM. WHERE THE DUTY IS SPECIFIC RATHER THAN AD VALOREM (E.G., COCONUT OIL) OR WHERE AT LEAST A COMPONENT OF THE DUTY IS SPECIFIC (E.G., ABACA CORDAGE) THE LIMITS, IF ANY, ON DUTY REDUCTIONS DEPEND UPON THE DETERMINATION OF THE AD VALOREM EQUIVALENT OF A SPECIFIC DUTY BASED ON THE VALUE OF IMPORTS DURING THE MOST RECENT "REPRESENTATIVE PERIOD". CURRENT U.S. PRICES FOR COCONUT OIL AND ABACA ARE

ROUGHLY 50 CENTS PER POUND OR MORE AND 70 CENTS PER POUND (AVERAGE FOR ALL CATEGORIES) RESPECTIVELY. AT THESE PRICES BILL WOULD PROBABLY PROVIDE SUFFICIENT AUTHORITY FOR NEGOTIATION IN MTN OF TARIFF REDUCTIONS REQUESTED BY GOP, BUT PRICES DO FLUCTUATE AND FINAL DETERMINATION MUST BE MADE BY PRESIDENT AFTER REVIEW BY TARIFF COMMISSION. THE RATE OF REDUCTIONS WOULD BE SUBJECT TO STAGING REQUIREMENTS OF BILL (THE GREATER OF 3 PER CENT AD VALOREM OR ONE-FIFTEENTH OF TOTAL REDUCTION PER YEAR). ANY REDUCTIONS ARE, OF COURSE, SUBJECT TO OVERALL MTN BARGAINING PROCESS.

8. SINCE DOUBLE TAXATION TREATY HAS BEEN RATIFIED BY U.S. SENATE, ALBEIT WITH RESERVATION, IT WOULD NOT BE POSSIBLE TO EFFECT CHANGES IN THAT DOCUMENT WITHOU RETURNING TO SENATE.

9. WITH REGARD PARA 1 (A) REF B, THERE IS LITTLE POSSIBILITY OF PHILIPPINE ACCESS FOR ITS SUGAR ON THE U.S. WEST COAST. BECAUSE UNDER CURRENT CONDITIONS ALL HAWAIIAN SUGAR

IS MARKETING IN THE WESTERN STATES, THIS AREA IS NORMALLY IN SUGAR SURPLUS. THUS ANY PHILIPPINE SHIPMENTS TO THE WEST COAST WOULD AGGRAVATE NORMAL SURPLUSES. MOREOVER, THERE IS ONLY ONE REFINERY FOR RAW SUGAR ON THE WEST COAST, OWNED AND OPERATED BY THE HAWAIIAN SUGAR INDUSTRY.

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10. RE SCHEME FOR GOP CORPORATION TO HOLD U.S. "CORPORATE" LAND IN TRUST (REF A), WE AGREE THAT U.S. WOULD NOT WISH, FOR TACTICAL REASONS, TO SEE SUCH ACTION TAKEN NOW ON UNILATERAL BASIS BUT WOULD HOPE TO HAVE FURTHER INFORMATION ON PLAN TO PERMIT FULL EVALUATION. CAN WE, FOR INSTANCE, ASSUME THAT "CORPORATE" MEANS THIS PLAN WOULD LEAVE U.S. CITIZEN RESIDENTIAL LAND INTACT? CAN WE ALSO ASSUME THAT GOP IS PREPARED TO COMPENSATE U.S. LAND OWNERS FOR LAND TAKEN, WHETHER THROUGH LONG-TERM LEASE AT NOMINAL RENTS OR THROUGH OTHER AGREED MEANS?

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